

California Victim Compensation and Government Claims Board
Open Meeting Minutes
November 17, 2011, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Anna Caballero, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, November 17, 2011, at 10:04 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos, San Bernardino County District Attorney, was absent.

Board staff present included Julie Nauman, Executive Officer; Patty Harris, Chief Deputy Executive Officer; and Wayne Strumpf, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the November 17, 2011, Board Meeting

The Board voted to approve the minutes of the November 17, 2011, Board meeting.

Item 2. Public Comment

Linda Siegel provided the following comments:

- County social workers are concerned about Section 13 “My Agreement to the Victim Compensation Program” on the CalVCP application.
- As a result of the adoption and implementation of CalVCP’s regulations, many agencies are no longer applying to the CalVCP for benefits. Those agencies have stopped assisting victims, which has created a problem in many communities, particularly in the Hispanic communities in Southern California. Further, many Hispanic serving agencies are no longer applying to the CalVCP.
- Now that AB 898 is in effect, the bill that increases the minimum amounts for restitution fines imposed on convicted defendants by 50 percent over a three-year period, there should be sufficient money flowing into the Restitution Fund to assist more victims.
- Approximately 85 percent of clients are concerned because they are not being paid for services provided by therapists.

Julie Nauman, Executive Officer, stated that she was well aware of the issue regarding Section 13 of the CalVCP application. She stated staff would review and analyze options for the CalVCP regarding that portion of the application.

Chairperson Caballero requested that Ms. Siegel encourage agencies who serve victims to notify the CalVCP if they notice a significant reduction in the number of victims applying for benefits to the CalVCP.

Michael Siegel, attorney, commented that his clients and their therapists made him aware of CalVCPs recent practice of evaluating billings by contacting claimants by telephone and letter in an attempt to verify whether billed services were actually rendered. When CalVCP staff do not receive a response from the claimant, either because the claimant may have moved or did not wish to respond to a State agency inquiry, the bills were denied as not verified or unverifiable. Mr. Siegel encouraged the Board to ask staff to reconsider this practice or find alternative approaches to receive the information. In addition, Mr. Siegel requested a copy of the letters that were sent to his clients. Lastly, Mr. Siegel commented that therapists informed him that over 75 percent of the payments due them have been stopped as a result of this practice.

Chairperson Caballero stated, with regard to staff’s review and evaluation of therapists’ billings, the Board would hold a separate hearing on the matter on a future date. Further, Ms. Caballero stated that although public comment is the appropriate time to make comments regarding matters that are not on the agenda, it would be advantageous to contact staff directly to discuss CalVCP processes to see if a mutual resolution could be reached. Mr. Siegel stated that he sent a letter to staff yesterday addressing the issue and staff has not had an opportunity to respond to his concerns.

Item 3. Executive Officer's Statement

2011 California State Employees Charitable Campaign (CSECC) Fundraiser

On November 9th the VCGCB held its 2011 CSECC Chili Cook-off, the annual fundraiser benefiting CSECC. This year's theme "The Best in the West Chili Chef" gathered staff with a flair for spicy cooking to present their interpretation of the best chili. Guest judges included Chef Jennifer Parker of Le Cordon Bleu, Chef Leo Heredia of Centro Cocina Mexicana (Paragary Restaurant Group), and Executive Officer Nauman. The successful lunchtime fundraiser event raised nearly \$300.00 for CSECC.

Suited for Success Clothing Drive

At the end of October, the VCGCB participated in the second annual Suited for Success clothing drive supporting Women Escaping a Violent Environment (WEAVE). WEAVE's "Suited for Success" program gives domestic violence survivors a new look and a fresh start by providing them with professional clothing and accessories as they re-enter the workforce. Along with providing women with business attire to assist in getting their lives moving forward again, the "Suited for Success" program also gives women a \$100.00 store voucher to shop for professional attire after completing a program intended to help them return to work.

The California Highway Patrol joined the CalVCP in its efforts and together collected over 500 items including over 200 suit items, professional clothing items, and over 100 accessories including belts, handbags, jewelry, and shoes.

Patty Harris, Chief Deputy Executive Officer, Retiring

Executive Officer Nauman announced that Patty Harris, Chief Deputy Executive Officer, would retire at the end of the October after serving 35 years of public service to the State of California.

Ms. Nauman stated that Ms. Harris became Chief in October 2009 and has been an integral part of the VCGCB. She thanked Ms. Harris for her leadership and guidance and wished her well in her retirement.

Item 4. Government Claims Program

Consent Agenda (Nos. 1- 399)

The Board voted to adopt the staff recommendations for item numbers 1-399, with the following exceptions: item numbers 41 (G595965), 48 (G590754), 91 (G590597), 107 (G596312), 138 (G598733), and 380 (G594074) were removed pending review of additional information received; item number 150 (G599175) was removed at the request of the parties; and item numbers 144 (G698907) and 331 (G600184) were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item 144, G698907

Joshua Emigh

Joshua Emigh appeared and addressed the Board. Mr. Emigh submitted a written statement to the Board for their review and consideration. There was no representation from the California Highway Patrol.

Jackie Tinetti, Manager, Government Claims Program, explained that Mr. Emigh requested reimbursement from the California Highway Patrol (CHP) in the amount of \$4,500.00 for damages caused to his vehicle. Ms. Tinetti stated that Mr. Emigh was involved in a collision, leaving his vehicle at a location where if immediate action was not taken, the safety of the public could have been jeopardized. To protect public safety, the CHP officer attempted to move Mr. Emigh's vehicle.

In the course of attempting to move the vehicle, the engine caught fire. The officer was acting within the scope of their official duty to protect life and public safety. She stated that the CHP reviewed and completed an investigation into the claim and recommended the claim be rejected. Further, the Government Claims Program staff reviewed the claim and concur with the CHP's recommendation.

Mr. Emigh stated that prior to the CHP officer arriving on the scene, the fire department had traffic under control, no traffic was flowing into the blocked lane, and there was a fire engine in front of his vehicle; therefore, removing his vehicle was unnecessary. When the CHP officer walked over to his vehicle and requested the keys to start his vehicle, he informed the officer that fluids were leaking from the engine compartment, oil was on the road, and a strong smell of gasoline was present. He requested that the officer not attempt to start the vehicle, however, the officer ignored his request. Immediately after the officer started the vehicle, it burst into flames. He stated that the officer's decision to start the vehicle caused more of a hazard, because the fire fighter who was maintaining traffic at the top of the hill had to abandon his post to extinguish the fire.

He stated that he received an estimate to repair his vehicle, which totaled over \$8,000, more than the purchase price of the vehicle. He stated that he was requesting \$4,500 in reimbursement from the CHP, which represented the price of the vehicle when he purchased it six months prior to the accident and which he continues to make monthly payments. Further, he stated that the decisions and actions taken by the officer resulted in a complete and total loss of his vehicle.

Chairperson Caballero asked Mr. Emigh how long the fire department personnel had been near his vehicle prior to the CHP officer arriving on scene and whether the fire department personnel had traffic moving around his vehicle. Mr. Emigh stated that the fire department was there approximately five minutes and the fire department had traffic flowing in the other lane.

Board member Chivaro stated that it would have been helpful to have a representative from CHP in attendance at the meeting. Ms. Tinetti stated that the CHP was unable to send a representative; however, CHP's written recommendation to the Government Claims Program made it clear that the officer acted within the scope of their official duty and, in the judgment of the officer, immediate action was required in order to protect the safety of everyone involved.

Chairperson Caballero asked Mr. Emigh if he submitted a claim to his automobile insurance company. Mr. Emigh stated that his insurance policy was cancelled one week prior to the accident.

Chairperson Caballero asked Mr. Emigh if a determination was made regarding who caused the initial accident and whether an accident report was filed. Mr. Emigh stated that a report was not filed and the CHP determined that it was a no-fault accident because it was due to a blown tire.

Chairperson Caballero stated that while it may be true that the officer was acting within their authority, the officer exacerbated the situation. Further, she stated that if someone acting under the scope of their authority exuberates the situation, seeing the risk, she was inclined to allow the claim.

Board member Chivaro stated that the only question he had was whether the vehicle would have caught fire had the officer not started the engine.

Chief Counsel Strumpfer stated that his concern as Chief Counsel, understanding Mr. Emigh's situation, is the issue of immunity for the CHP officer in their official duty.

Board member Chivaro stated that Mr. Emigh was not seeking damages against the officer himself; the officer is immune. He stated that the department was indemnifying Mr. Emigh.

The Board voted to overturn the CHP and Government Claims Program staff recommendations and approved the claim in the amount of \$4,500.00.

Consent Agenda Appearance

Item 331, G600184

John L. Debbs

John L. Debbs appeared and addressed the Board. There was no representation from the California Workers' Compensation Appeals Board, the Department of Industrial Relations, the State Compensation Insurance Fund, or the Department of Veterans Affairs.

Jackie Tinetti, Manager, Government Claims Program, stated that Mr. Debbs requested payment in the amount of \$12 million as compensation for the denial of his full social security benefits. He alleged that the denial resulted from violations of his federal due process rights by the California Workers' Compensation Appeals Board, the Department of Industrial Relations, the State Compensation Insurance Fund, and the Department of Veterans Affairs, among other state entities. The claim was accepted by the Government Claims Program only to the extent that it alleged damages that occurred within the six months prior to the date the claim was presented; however, Government Claims Program staff recommended that the claim be rejected because the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Mr. Debbs clarified that he filed an amended claim with the Government Claims Program on October 24th reducing his request for compensation from \$12 million to \$4 million. He stated that his attorney, the California courts, and the Supreme Court were guilty of refusing to grant judicial review because he was denied his inalienable right to due process of law.

Chairperson Caballero asked Mr. Debbs to explain the facts upon which he believed that \$4 million was owed him.

Mr. Debbs provided the Board with the following breakdown of his claim: (1) \$1,560,000.00 for back salary because he was forced to resign as a result of the mental incompetency ruling; (2) \$520,000.00 for 10 years of social security benefits in the future; (3) \$500,000.00 for forecloses on properties that he owned as rental properties that were lost as a result of the State Compensation Insurance Fund and the Workers' Compensation and Appeals Board's behavior against him claiming that he was mentally incompetent. His treating psychiatrist stated that he was not ill enough to be found incompetent, yet he was forced to resign; (4) \$250,000.00 for pain and suffering as compensation for being in a mental hospital for depression; (5) \$500.00 in damages; and (6) retirement is unknown because it would have increased considerably had he worked a full career. Mr. Debbs stated that the total amount he was seeking amounted to \$3,330,000.00.

Chairperson Cabellero explained that the Board's authority is extremely limited. Given the amount and circumstances of the claim, the Board did not have jurisdiction or authority over the claim.

Mr. Debbs asked Chairperson Cabellero if the Board had jurisdiction to put his claim before the Legislature to ask them to make the decision regarding his claim.

Chairperson Cabellero stated that his case would need to be tried in a court of law. She stated that the Constitution is written such that there are separate powers that are vested in the different branches of government. They are kept distinct in order to prevent abuse. She stated that the Board's only task was to determine the issues surrounding his claim. The Board did not have the ability to determine complex issues or swear in witnesses, which would be needed in his case. She stated that she could not give legal advice, but suggested that Mr. Debbs consult with an attorney so that an adequate complaint could be made.

Ms. Caballero thanked Mr. Debbs for providing the Board with information regarding his claim; however, the Board could not allow the claim.

The Board voted to adopt the staff recommendation to reject the claim.

Item 5. Claim of West Star Environmental, Inc.
Claim Number G588905

Jackie Tinetti, Manager, Government Claims Program, stated that, with the parties' concurrence, the claim was removed from the agenda pending review of additional information and to ensure that the parties could be present when it is heard at a future meeting.

Item 6. Claim of Inter-Con Security Systems, Inc.
Claim Number G595000

Inter-Con Security Systems, Inc. requested payment in the amount of \$123,730.01 for security services provided to the California Department of Corrections and Rehabilitation from August 2009 through December 2010.

CDCR and GCP recommended that the claim be allowed in the amount of \$123,730.01 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim.

Item 7. Claim of UBS Securities LLC
Claim Number G598033

UBS Securities LLC requested payment in the amount of \$103,123.56 to replace a stale-dated tax refund warrant issued by the California Employment Development Department.

The California Employment Development Department, State Controller's Office, and Government Claims Program staff recommended that the claim be allowed in the amount of \$103,123.56 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim.

Item 8. Claim of Cardno Entrix
Claim Number G599223

Cardno Entrix requested payment in the amount of \$132,741.92 for professional services provided to the California Department of Food and Agriculture.

The California Department of Food and Agriculture and Government Claims Program staff recommended that the claim be allowed in the amount of \$132,741.92 under authority of Government Code section 965 (agency pay).

The Board voted to adopt the staff recommendation to allow the claim.

Item 9. Applications for Discharge from Accountability for Collection

The item was removed from the agenda.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:58 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 10:58 a.m. to deliberate on the proposed decisions numbers 1-108.

Open Session

The Board reconvened into open session at 11:11 a.m. The Board voted to adopt the proposed decisions for numbers 1-108 with the following exceptions: (1) a correction was made to number 2 because it contained a typographical error in the application number. The correct application number is A09-1687490 and (2) number 39 was pulled.

Adjournment

The Board meeting adjourned at 11:12 a.m.